

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0147

Responsible Officer

Periods 1996 through 1997

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ISSUES

I. Sales Tax: Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-8.1-5-1 (b); Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270, 273 (Ind.1995).

The taxpayer protests the proposed assessment of responsible officer liability for unpaid sales taxes.

STATEMENT OF FACTS

The taxpayer owned 13% of the stock of an auto repair business (hereinafter referred to as "Company X"), and was a corporate officer. In an affidavit, the taxpayer describes his duties as doing the mechanical work necessary to repair customer cars. Additional facts will be provided below.

I. Sales Tax: Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

Also of import is Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270, 273 (Ind.1995), which states “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Finally, the Indiana Department of Revenue’s “notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.” IC 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

The taxpayer argues that his duties were to fix and repair cars, and that he would only occasionally accept a payment from a customer (and then only if no one was in the office). When he did accept payment from customers, he states he would put the money in the cash register. He states that the President of Company X was the person who in fact held the managerial duties, and that the President of Company X was the “person with control of the checkbook and wrote the majority of the checks. He [the President] had access to the checkbook. He would take the checkbook home with him at night.”

The taxpayer also supplied supporting documentation to show that he did not have check writing responsibilities or office duties.

In Safayan the Indiana Supreme Court considered “whether the person actually exercised control over the finances of the business.” Id. at 273. From the facts presented at hearing, it is apparent that the taxpayer did not have actual control over the finances of the company.

FINDING

The taxpayer’s protest is sustained.

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